



July 31, 2000

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
Office of City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR2000-2876

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137533.

The City of Dallas (the "city") received a request for the assessors' notes from the requestor's Lieutenant oral examination. You claim that the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You have submitted the assessors' notes as Exhibit D but have also submitted the "Candidates Problem Analysis Exercise" and the requestor's answers to the exercise as Exhibits B and C, respectively. Although you acknowledge that Exhibits B and C have not been requested, you ask this office to make a determination in case the information is requested in the future. Because Exhibits B and C are not responsive to the request at issue, we decline to determine the applicability of section 552.122 to information that has not been requested. In the event that Exhibits B and C are requested in the future, you must ask this office for a decision at that time. Therefore, this ruling is only addressing the applicability of section 552.122 to Exhibit D.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which the knowledge or ability of an individual or group in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

In this instance, you seek to withhold the assessors' handwritten notes from the requestor's oral assessment. You assert that disclosure of the assessors' notes will reveal the subject matter of the problem analysis exercise. After reviewing the assessors' notes and considering your arguments, we conclude that the assessors' notes evaluate the candidate's overall suitability for the position rather than his or her knowledge or ability to perform the assigned work. Further, we do not believe that the assessors' notes reveal any interview or test questions. Therefore, the assessors' notes cannot be withheld as test items under section 552.122(b). Accordingly, the city must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bialek". The signature is written in a cursive style with a large initial "J".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB\nc

Ref: ID# 137533

Encl: Submitted documents

cc: Ken Clower
2704 Northshore
Flower Mound, Texas 75022
(w/o enclosures)